IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

WP(C).No. 16662 of 2007(H)

PETITIONER:

KOCHU KUNJU, S/O.KUTTY,
PARAKUZHY HOUSE, KANCHIYAR, AYYAPPANCOIL VILLAGE,
IDUKKI DISTRICT.

BY ADV. SMT.P.K.RADHIKA

RESPONDENTS:

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1. THE RETURNING OFFICER,
NARIAM PARA MILK CO-OPERATIVE SOCIETY,
NARIAM PARA, IDUKKI DISTRICT.

2. T.V.BALAN, S/O.VELLANI,
THAKADYIAL HOUSE, AYYAPPANCOIL, IDUKKI DISTRICT.

R1 BY GOVERNMENT PLEADER (SHRI P.N. SANTHOSH)

R2 BY ADV. SRI.JOICE GEORGE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C). NO. 16662 OF 2007 H

PETITIONER'S EXHIBITS:

EXT.P1 **TRUE COPY OF THE CASTE CERTIFICATE.**

EXT.P2 **TRUE COPY OF INTIMATION DATED 22.5.2007 OF THE CANDIDATES.**

EXT.P3 **TRUE COPY OF INTIMATION DATED 22.5.2007 OF THE CANDIDATES.**

EXT.P4 **TRUE COPY OF THE INTIMATION ISSUED BY THE RETURNING OFFICER.**

EXT.P5 **TRUE COPY OF THE FINAL LIST OF THE CANDIDATES.**

EXT.P6 **TRUE COPY OF THE NOTIFICATION.**

RESPONDENTS' EXHIBITS:

EXT.R2(A) **TRUE COPY OF THE NOTICE DATED 25.5.2007.**

EXT.R2(B) **TRUE COPY OF THE MODEL BALLOT PAPER FOR THE ELECTION TO THE MANAGING COMMITTEE OF THE NARIYAMPARA MILK PRODUCERS CO-OP. SOCIETY.**

// TRUE COPY//

PS TO JUDGE

K. M. JOSEPH, J.

W.P.C. NO. 16662 OF 2007 H

Dated this the 19th June, 2007

JUDGMENT

Petitioner seeks a direction to accept the original of the Caste Certificate produced by him and to publish a fresh list of candidates after incorporating his name. Case of the petitioner, in brief, is that he is a Member of the Scheduled Caste Community. It is stated that he offered his candidature to the reserved seat of Scheduled Caste Community in the Board of Directors of the Nariyampara Milk Producers Co-operative Society Limited and along with the nomination, he has submitted photo copy of the Caste Certificate, undertaking that the original of the Caste Certificate will be produced at the time of scrutiny. There was some dispute and Police intervened and the petitioner was restrained from entering the Society. Later, the first respondent Returning Officer published a list of selected candidates in which the petitioner's opposed candidate was selected unopposed. This is the case of petitioner. The

party respondent, namely the second respondent has filed a Counter Affidavit, inter alia, stating as follows:

The nomination was on 21.5.2007 and on scrutiny the second respondent's nomination was found valid on 22.5.2007 and the final list was published on 23.5.2007. It is the case of the respondents that the petitioner did not produce valid Caste Certificate, but instead, produced a photo copy of a Caste Certificate of the year 2000, the validity of which expired within six months from the date of its issuance. It is pointed out that Ext.P1 Caste Certificate is dated 22.5.2007 and therefore it could not have been produced on 21.5.2007, the date of nomination. It is therefore evident that the petitioner did not produce a valid Caste Certificate along with his nomination paper at the time of submitting nomination.

2. Petitioner, of course, filed a Reply Affidavit. It is, inter alia, stated that the petitioner was prevented from producing the Caste Certificate and it is stated that he received the Caste Certificate only on 22.5.2007, i.e. on the date of

scrutiny. Of course, the specific case of the petitioner is that the entry of the petitioner on the date of scrutiny was restricted, and that nowhere it is stated that the Original Certificate should be produced along with the nomination.

3. I heard the learned counsel appearing for the petitioner and the learned counsel for second respondent besides the learned Government Pleader. The admitted fact is that the date fixed for receiving nomination was on 21.5.2007. The nomination paper submitted by petitioner was not accompanied by the original Caste Certificate as such. The matter was taken for scrutiny on 22.5.2007 and again the final list of candidates came to be published on the basis of the scrutiny on 23.5.2007. However, the Writ Petition itself is filed on 30.5.2007 and it is brought up on 1.6.2007. One of the contentions taken by the party respondent is that there is a remedy for the petitioner by way of challenging the election under Section 69 of the Co-operative Societies Act. Anyway, the election is to be held on 20.6.2007. In such circumstances, I feel that having regard to all

facts, the petitioner should be relegated to pursue the remedy by way of challenging the election of the successful party under Section 69 of the Act. Without prejudice to the right of the petitioner to challenge the election under Section 69 of the Act, this Writ Petition is disposed of.

K. M. JOSEPH, JUDGE

kbk.